

DOCUMENT RESUME

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[Vendor May Exceed Government Requirements on Automobile Procurement but Not Statutory Price Ceiling]. B-188439. June 30, 1977. 7 pp.

Decision re: Chrysler Corp.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services:
Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1964).

Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration.
Authority: 31 U.S.C. 638a(c)(1) F.P.R. 1-2.404-2(a-b). B-182754 (1975).

Bidder on contract for automobiles was rejected as nonresponsive. Bid included optional automotive equipment Government did not need. Vendor may properly exceed Government requirements, except where, as here, this inclusion made cars exceed statutory price ceiling; agency cannot procure items with unnecessary features because vendors find it difficult to realize a profit from specified item. (DJM)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-188439

DATE: June 30, 1977

MATTER OF: Chrysler Corporation

DIGEST:

1. Where IFB requires compliance with statutory price limitation (31 U.S.C. § 638a(c)(1) (1970)) for passenger motor vehicles, GSA, pursuant to FPR § 1-2.404-2(a) (1974 ed. amend. 121), properly rejected as nonresponsive bid which included price not only for specified vehicles and additional systems and equipment but also price for unsolicited optional equipment (i.e., additional systems and equipment above that specified in the IFB) in circumvention of statutory price limitation.
2. Vendor may bid item which exceeds Government's legitimate needs and its bid may be accepted, except where, as here, it would violate statutory limitation on expenditure of funds, or where it would result in higher price than award to lower-priced, responsive bidder.
3. Procuring activity cannot procure items with unnecessary features, such as unsolicited options, simply because vendors find it difficult or impossible to supply specified item to Government at a profit.

On January 11, 1977, the General Services Administration (GSA) issued invitation for bids (IFB) FYPL-P4-B2254-A-2-1-77 for the procurement of passenger motor vehicles and specified options. The IFB provided that:

"(b) By statutory limitation, the price of the standard passenger vehicles completely equipped for ordinary operation shall not exceed \$2,700 for Sedans and \$3,100 for Station Wagons, exclusive of (1) transportation costs and (2) the 'additional systems and equipment' found appropriate for this procurement pursuant to Public Law 91-423 and FPMR Subpart 101-25.304, 304-1 and 304-2 dated October 30, 1971. Both (1) the amount included in each item bid price for transportation; and (2) the price for the

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specified 'additional systems and equipment' shall be stated separately in the schedule of items. (Offeror's failure to state both (1) and (2) shall render its offer non-responsive.)

"Offerors are further cautioned that bids whose defective price structure constitutes a circumvention of the statutory limitation for the basic vehicles shall be rejected. For purposes of this solicitation, a bid with a defective price structure is one which is based on prices for the additional systems and equipment or transportation significantly in excess of the prices available in the commercial market place."

Only Chrysler Corporation (Chrysler) submitted a bid. GSA, however, rejected the bid. Chrysler's bid was rejected in part because it included unsolicited optional equipment (i.e., additional systems and equipment above that specified in the IFB) which the Government would have been required to purchase if it had accepted Chrysler's bid. In its notice of rejection to Chrysler and in its submittals to our Office, GSA states in substance that Chrysler's bid was rejected for the following reasons:

1. By adding significant options to the vehicles in addition to those specified by the Government, Chrysler imposed conditions which modified the solicitation requirements, thus making its bid nonresponsive. Here, GSA refers to Federal Procurement Regulations § 1-2.404-2(b) (1964 ed. amend. 121).
2. The inclusion of unsolicited options in Chrysler's bid constitutes an attempted circumvention of the statutory price limitation (referred to above) within the meaning of Chrysler Corporation, B-182754, February 18, 1975, 75-1 CPD 100.
3. If its bid had been accepted, Chrysler would have been afforded an unfair advantage not enjoyed by other prospective bidders which may have bid had they been advised that submitting bids with unsolicited options was an acceptable method of conforming to the statutory price limitation.
4. Under 31 U.S.C. § 638a(c)(1) (1970), the Administrator of GSA is authorized to allow the purchase of options, and each solicitation contains the Administrator's determination of what options are necessary to satisfy the Government's legitimate needs. Chrysler bid options

which far exceeded the Government's legitimate needs. By this action, Chrysler, in contravention of 31 U.S.C. § 638a(c)(1) (1970), would abrogate the Administrator's responsibility for specifying the Government's legitimate needs.

5. Chrysler's bid prices were unreasonable when compared to the Government's legitimate needs.

In response to GSA's reasons for rejecting its bid, Chrysler states in substance as follows:

1. The inclusion of unsolicited options in a bid does not modify a solicitation.
2. It is inconceivable that the inclusion of any unsolicited options in a bid should render a bid nonresponsive as long as the vehicle is suitable for its intended use.
3. The vehicles bid were suitable for their intended use and should have been accepted by GSA.
4. The unsolicited options were included in the bid in an attempt to comply with the solicitation requirements and the statutory price limitation.
5. In many instances, the inclusion of unsolicited options in a bid is the only way that an automobile manufacturer can sell vehicles to the Government at a profit.
6. GSA has in the past purchased vehicles with standard and optional equipment which exceeded the equipment specified in the solicitation.
7. Competitive manufacturers are aware of the procurement regulations and they could have submitted bids similar to Chrysler's. To infer, then, that competitive manufacturers were unable to bid because GSA had not advised them of an acceptable method of complying with the statutory price limitation is totally without foundation.
8. Chrysler's bid was rejected in part because of the degree by which it exceeded the Government's legitimate needs.

Applicable regulations do not define the degree by which a bidder may exceed the Government's legitimate requirements and still have its bid considered for award. Consequently, it is incumbent upon the Government to state precisely the degree by which the Government's legitimate needs may be exceeded, if at all.

The authority of the Administrator of GSA to procure passenger motor vehicles and to purchase appropriate options is described in 31 U.S.C. § 638a(c)(1) (1970), as follows:

"(c) Maximum purchase price of vehicles; determination of completely equipped vehicle; purchase of additional systems and equipment; use for official purposes; penalties.

Unless otherwise specifically provided, no appropriation available for any department shall be expended--

"(1) to purchase any passenger motor vehicle (exclusive of buses and ambulances), at a cost, completely equipped for operation, and including the value of any vehicle exchanged, in excess of the maximum price therefor, if any, established pursuant to law by a Government agency and in no event more than such amount as may be specified in an appropriation or other Act, which shall be in addition to the amount required for transportation. A passenger motor vehicle shall be deemed completely equipped for operation if it includes the systems and equipment which the Administrator of General Services finds are customarily incorporated into a standard passenger motor vehicle completely equipped for ordinary operation. Notwithstanding any other provisions of law, additional systems or equipment may be purchased whenever the Administrator finds it appropriate. The price of such additional systems or equipment shall not be considered in determining whether the cost of a passenger motor vehicle is within any maximum price otherwise established by law;"

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The vehicles as specified in the IFB, including the specified options, represent the Administrator's determination, made pursuant to 31 U.S.C. § 638a(c)(1) (1970), of the Government's legitimate needs. In this connection, the solicitation provided the following with regard to the method of award:

"Award will be made item by item for the basic vehicle together with the specified additional systems and equipment on the basis of the price quoted covering the basic vehicle, specified additional systems and equipment, and transportation.
* * *"

In evaluating Chrysler's bid, it was discovered that although the prices for the basic vehicles were within the statutory price limitations, the prices for additional systems and equipment included optional equipment far in excess of that specified in the IFB. For example, it was determined that the price for item 1 included \$1,149 for option items in addition to those called for under the applicable specifications. Similarly, the prices for other items included prices from \$475 to \$633 for option items above those stated in the solicitation. Accordingly, for the reasons noted above, the bid was rejected.

While GSA has advanced several reasons justifying its action, the main thrust of its justification, with which we agree, is that an award to Chrysler would circumvent the statutory limitation of 31 U.S.C. § 638a(c)(1) (1970) with regard to "additional systems or equipment" which have been determined "appropriate" for procurement by the GSA Administrator as specified in the IFB. Chrysler's bid, then, like Chrysler's bid in Chrysler Corporation, supra, failed to conform to the statutory limitation, although for a different reason, which was an essential requirement of the IFB. Accordingly, Chrysler's bid was properly rejected as being nonresponsive. See FPR § 1-2.404-2(a) (1964 ed. amend. 121). Since GSA's rejection of Chrysler's bid was in conformance with applicable law, it is not necessary to consider the other reasons advanced as justification for its action, or Chrysler's responses thereto.

However, other matters raised by Chrysler are discussed below.

It is true, as a general proposition, that there is no prohibition against the acceptance of items which exceed the Government's legitimate

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needs. However, such proposition is not applicable where, as here, it would result in the violation of a statutory limitation on the expenditure of funds, or in a situation where acceptance of a bid exceeding the Government's legitimate minimum needs would result in a higher price than award to a lower-priced, responsive bidder.

While GSA admits to having procured vehicles in the past with unsolicited options, GSA states that:

"* * * normally, GSA does not know from a bid what additional equipment, if any, is being offered beyond the minimum required and, as a practical matter, has no need for such information so long as the specification requirements are met."

This statement is based upon the fact that any additional equipment that might be included in a particular bid is not separately listed and, in a competitive procurement, the reasonableness of the low bid for the basic vehicle and the additional systems and equipment is determined primarily on the basis of a comparison with the other bids. However, in a situation where, as here, the prices for the additional systems and equipment appeared very high, and there were no other bids to compare, the matter was investigated prior to possible acceptance of the bid.

GSA offers a clear and satisfactory answer to Chrysler's contention that, because of GSA's bid evaluation policies and procedures, it is in doubt as to what GSA considers a responsive bid; consequently, GSA should state specifically the degree by which the Government's legitimate needs may be exceeded, if at all--

"Under the authority of 31 U.S.C. 638a(c)(1) the Administrator of GSA is authorized to purchase appropriate 'additional systems and equipment for passenger motor vehicles.' Accordingly, the item description for each of our passenger motor vehicle solicitations contains his determination of the appropriate additional systems and equipment which will meet the minimum requirements of the Government. Should a vendor fail to offer or take exception to a required additional system then his bid will be rejected as nonresponsive. Should a vendor offer us an additional system and/or equipment beyond that specified i.e., beyond the

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Government's minimum needs as determined by the Administrator, then GSA will evaluate the bid in the same manner as one not containing such a system or equipment exceeding our minimum needs. In other words the contracting officer will separately examine the reasonableness of the price of the vehicle(s) as a whole, the reasonableness of the price of the required additional systems and equipment, and the reasonableness of the price of the basic vehicle.

"Other than price no comparison or evaluation is made between one vendor's bid which includes additional systems exceeding our requirements with that of another vendor's bid which excludes such additional systems. In other words, comparisons would be made to what is considered a reasonably priced vehicle which includes only the required additional systems as determined by the Administrator to be necessary.

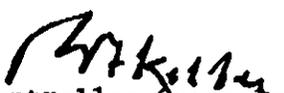
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"[Chrysler, then should bid] a reasonable price for our minimum requirements as clearly specified in our solicitations without contravening the statutory price limitation by attempting to load profit and costs on additional equipment and systems which we neither require nor desire."

Finally, Chrysler alleges that, in many instances, an automobile manufacturer has to submit a bid with unsolicited options in order to make a profit from the sale of vehicles to the Government. Assuming, arguendo, that this is correct, a procuring activity cannot procure items with unnecessary features, such as unsolicited options, simply because vendors find it difficult or impossible to supply the specified item at a profit.

Based on the foregoing, the protest is denied.

Deputy


Comptroller General
of the United States